

AMENDED IN ASSEMBLY MAY 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2330

Introduced by Assembly Member Migden

February 21, 2002

An act to amend ~~Section 1942.5~~ *Sections 1942.5 and 1950.2* of the Civil Code, relating to landlord and tenant.

LEGISLATIVE COUNSEL'S DIGEST

AB 2330, as amended, Migden. Landlord and tenant: ~~retaliation~~.

(1) Existing law prohibits a lessor from retaliating against a lessee because the lessee has exercised ~~certain of his or her specified rights, or because the lessee has complained to an appropriate agency as to tenantability of a dwelling, as specified, if the lessee is not in default on his or her rent.~~ Existing law, in these circumstances, prohibits the lessor from attempting to recover possession of a dwelling in an action or proceeding, causing the lessee to quit involuntarily, increasing the rent, or decreasing any services within 180 days of specified dates. *Existing law prohibits a lessee from invoking these rights more than once in a 12-month period. Existing law provides that a court may award punitive damages against a lessor or the agent of lessor in an amount not to exceed \$1,000.*

This bill would ~~also prohibit a lessor from retaliating against a lessee because a court has relieved after the date the lessee from forfeiture pursuant to a specified court proceeding, and would add the date that a court relieves the lessee from forfeiture to list of specified dates described above.~~ *has made a written complaint to the lessor about tenantability or a written or oral complaint about any other concern*

regarding his or her tenancy, or has made a written or oral complaint, as specified, with an appropriate agency about any concern regarding his or her tenancy. The bill would also prohibit lessor retaliation as described above after the filing of appropriate documents commencing a judicial or arbitration proceeding about any concern regarding the lessee's tenancy, or after the lessee or legal occupant lawfully and peaceably exercised or asserted any legal right. The bill would delete the requirement that the lessee not be in default on his or her rent to be permitted to assert these rights. The bill would reduce the time within which a lessee is prohibited from invoking these rights more than once, as described above, to 6 months. The bill would increase the maximum amount that a court may award as punitive damages to \$2,000.

(2) Existing law regulates the amount of security a landlord may demand or receive pursuant to a rental agreement for residential property to be used as a dwelling. It limits that amount to 2 months' rent for unfurnished residential property, and to 3 months' rent for furnished residential property, in addition to rent for the first month, as specified. Existing law defines security for these purposes. Existing law permits landlords to apply security only if reasonably necessary for specified purposes, and prohibits the application of security for defective conditions that preexisted the tenancy or for ordinary wear and tear. Existing law requires a landlord to furnish to the tenant, within 3 weeks of vacating the premises, a copy of an itemized statement indicating the security received and the disposition of the security, as specified.

This bill would redefine security to include any charges imposed at the beginning of tenancy, including costs associated with processing a new tenant, and costs associated with cleaning the property, as specified. The bill would require a landlord to pay interest to the tenant on any security held for more than 6 months, as specified. The bill would define ordinary wear and tear with regard to the application of security to repairs of the dwelling, and would impose on the landlord the burden of proving that a tenant is liable for damages beyond ordinary wear and tear. The bill would require the landlord to inspect the dwelling when the tenant vacates, to give the tenant specified notices in this regard, and would provide that a failure to do so would result in the landlord forfeiting any claim on the security. The bill would change the amount of statutory damages for certain violations from \$600 to twice the amount of the security.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. Section 1942.5 of the Civil Code is amended to read:

1942.5. (a) ~~If the lessor retaliates against the lessee because of the exercise by the lessee of his or her rights under this chapter, because of his or her complaint to an appropriate agency as to tenantability of a dwelling or because a court has relieved the lessee from forfeiture pursuant to Section 1179 of the Code of Civil Procedure, and if the lessee of a dwelling is not in default as to the payment of his rent, the lessor may not recover possession of a dwelling in any action or proceeding, cause the lessee to quit involuntarily, increase the rent, or decrease any services within 180 days of any of the following: A lessor who retaliates against a lessee because of the exercise by the lessee of the following rights is prohibited from causing the lessee to quit involuntarily or recovering possession of the dwelling in any action or proceeding, or increasing the rent, or decreasing any services within 180 days:~~

(1) After the date upon which the lessee, in good faith, has given notice pursuant to Section 1942, or has made an oral *or written* complaint to the lessor regarding tenantability *or any other concern regarding his or her tenancy.*

(2) After the date upon which the lessee, in good faith, has filed a written complaint, or an oral complaint which is registered or otherwise recorded in writing, with an appropriate agency, of which the lessor has notice, for the purpose of obtaining correction of a condition relating to tenantability *or any other concern regarding his or her tenancy.*

(3) After the date of an inspection or issuance of a citation, resulting from a complaint described in paragraph (2) of which the lessor did not have notice.

(4) After the filing of appropriate documents commencing a judicial or arbitration proceeding involving the issue of tenantability *or any other concern regarding his or her tenancy.*

(5) After entry of judgment or the signing of an arbitration award, if any, when in the judicial proceeding or arbitration the issue of tenantability is determined adversely to the lessor.

(6) ~~After the date a court relieves the lessee from forfeiture pursuant to Section 1179 of the Code of Civil Procedure. lessee or~~

1 *legal occupant lawfully and peaceably exercised or asserted any*
2 *right under the law.*

3 In each instance, the 180-day period shall run from the latest
4 applicable date referred to in paragraphs (1) to (6), inclusive.

5 (b) A lessee may not invoke the provisions of subdivision (a)
6 more than once in any ~~12-month~~ *six-month* period.

7 (c) It shall be unlawful for a lessor to increase rent, decrease
8 services, cause a lessee to quit involuntarily, bring an action to
9 recover possession, or threaten to do any of those acts, for the
10 purpose of retaliating against the lessee because he or she has
11 lawfully organized or participated in a lessees' association or an
12 organization advocating lessees' rights or has lawfully and
13 peaceably exercised any rights under the law. In an action brought
14 by or against the lessee pursuant to this subdivision, the lessee shall
15 bear the burden of producing evidence that the lessor's conduct
16 was, in fact, retaliatory.

17 (d) Nothing in this section shall be construed as limiting in any
18 way the exercise by the lessor of his *or her* rights under any lease
19 or agreement or any law pertaining to the hiring of property or his
20 right to do any of the acts described in subdivision (a) or (c) for any
21 lawful cause. Any waiver by a lessee of his *or her* rights under this
22 section shall be void as contrary to public policy.

23 (e) Notwithstanding the provisions of subdivisions (a) to (d),
24 inclusive, a lessor may recover possession of a dwelling and do any
25 of the other acts described in subdivision (a) within the period or
26 periods prescribed therein, or within subdivision (c), if the notice
27 of termination, rent increase, or other act, and any pleading or
28 statement of issues in an arbitration, if any, states the ground upon
29 which the lessor, in good faith, seeks to recover possession,
30 increase rent, or do any of the other acts described in subdivision
31 (a) or (c). If ~~such~~ *the* statement be controverted, the lessor shall
32 establish its truth at the trial or other hearing.

33 (f) Any lessor or agent of a lessor who violates this section shall
34 be liable to the lessee in a civil action for all of the following:

35 (1) The actual damages sustained by the lessee.

36 (2) Punitive damages in an amount of not less than one hundred
37 dollars (\$100) nor more than ~~one~~ *two* thousand dollars ~~(\$1,000)~~
38 ~~(\$2,000)~~ for each retaliatory act where the lessor or agent has been
39 guilty of fraud, oppression, or malice with respect to ~~such~~ *the* act.

(g) In any action brought for damages for retaliatory eviction, the court shall award reasonable attorney's fees to the prevailing party if either party requests attorney's fees upon the initiation of the action.

(h) The remedies provided by this section shall be in addition to any other remedies provided by statutory or decisional law.

SEC. 2. Section 1950.5 of the Civil Code is amended to read:

1950.5. (a) This section applies to security for a rental agreement for residential property that is used as the dwelling of the tenant.

(b) As used in this section, "security" means any payment, fee, deposit or charge, including, but not limited to, *any payment, fee, deposit, or charge that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:*

(1) The compensation of a landlord for a tenant's default in the payment of rent.

(2) The repair of damages to the premises, exclusive of ordinary wear and tear, caused by the tenant or by a guest or licensee of the tenant.

(3) The cleaning of the premises upon termination of the tenancy *necessary to return the unit to the same condition it was in at the inception of the tenancy.*

(4) To remedy future defaults by the tenant in any obligation under the rental agreement to restore, replace, or return personal property or appurtenances, exclusive of ordinary wear and tear, if the security deposit is authorized to be applied thereto by the rental agreement.

(c) A landlord may not demand or receive security, however denominated, in an amount or value in excess of an amount equal to two months' rent, in the case of unfurnished residential property, and an amount equal to three months' rent, in the case of furnished residential property, in addition to any rent for the first month paid on or before initial occupancy.

This subdivision does not prohibit an advance payment of not less than six months' rent ~~where~~ *if* the term of the lease is six months or longer.

1 This subdivision does not preclude a landlord and a tenant from
2 entering into a mutual agreement for the landlord, at the request of
3 the tenant and for a specified fee or charge, to make structural,
4 decorative, furnishing, or other similar alterations, if the
5 alterations are other than cleaning or repairing for which the
6 landlord may charge the previous tenant as provided by
7 subdivision (e).

8 (d) (1) Any security shall be held by the landlord for the tenant
9 who is party to the lease or agreement. ~~The~~

10 (2) *Interest on the security shall be paid the first month of each*
11 *calendar year by the landlord to the tenant on any security held*
12 *more than six months, at the rate of 1 percent less than the Federal*
13 *Reserve Discount Rate as of December 31st of the preceding*
14 *calendar year. Any landlord who violates this paragraph is liable*
15 *for twice the amount of the accrued interest. This paragraph does*
16 *not apply in any city, county, or city and county that by charter,*
17 *ordinance, or regulation requires the payment to tenants of interest*
18 *on security.*

19 (3) *The claim of a tenant to the security shall be prior to the*
20 *claim of any creditor of the landlord.*

21 (e) The landlord may claim of the security only those amounts
22 as are reasonably necessary for the purposes specified in
23 subdivision (b). The landlord may not assert a claim against the
24 tenant or the security for damages to the premises or any defective
25 conditions that preexisted the tenancy, for ordinary wear and tear
26 or the effects thereof, whether the wear and tear preexisted the
27 tenancy or occurred during the tenancy, or for the cumulative
28 effects of ordinary wear and tear occurring during any one or more
29 tenancies.

30 ~~(f)~~—*“Ordinary wear and tear” means the deterioration or*
31 *depreciation in value of a premise that is the result of reasonable*
32 *and ordinary use by its occupants. For purposes of this section,*
33 *ordinary wear and tear is deterioration that occurs through every*
34 *day usage, rather than unusual damage caused by tenant abuse or*
35 *carelessness and includes, but is not limited to, deterioration that*
36 *is rectified by routine painting, carpet replacement, or other*
37 *repairs. If a landlord claims a tenant is liable for damages beyond*
38 *ordinary wear and tear, the landlord bears the burden of proof of*
39 *the claim.*

(f) At a reasonable time after the notification of the end of a tenancy, the landlord, or an agent of the landlord, shall make an initial inspection of the premises. The landlord shall notify the tenant of the tenant's right to be present at this initial inspection. Based on the inspection, the landlord shall give the tenant an itemized statement specifying any deductions from the security deposit the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises. Failure to make the notification or make the inspection and report shall result in the landlord forfeiting any claim on the security.

(g) Within three weeks after the tenant has vacated the premises, the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security and shall return any remaining portion of the security to the tenant.

~~(g)~~

(h) Upon termination of the landlord's interest in the ~~dwelling unit in question~~ premises, whether by sale, assignment, death, appointment of receiver or otherwise, the landlord or the landlord's agent shall, within a reasonable time, do one of the following acts, either of which shall relieve the landlord of further liability with respect to the security held:

(1) Transfer the portion of the security remaining after any lawful deductions made under subdivision (e) to the landlord's successor in interest. The landlord shall thereafter notify the tenant by personal delivery or by first-class mail, postage prepaid, of the transfer, of any claims made against the security, of the amount of the security deposited, and of the names of the successors in interest, their address, and their telephone number. If the notice to the tenant is made by personal delivery, the tenant shall acknowledge receipt of the notice and sign his or her name on the landlord's copy of the notice.

(2) Return the portion of the security remaining after any lawful deductions made under subdivision (e) to the tenant, together with an accounting as provided in subdivision ~~(f)~~ (g).

~~(h)~~

(i) Prior to the voluntary transfer of a landlord's interest in a dwelling unit ~~the premises~~, the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

(1) The security remaining after any lawful deductions are made.

(2) An itemization of any lawful deductions from any security received.

(3) His or her election under paragraph (1) or (2) of subdivision ~~(g)~~ (h).

~~Nothing in this~~

~~This~~ subdivision ~~shall~~ does not affect the validity of title to the real property transferred in violation of ~~the provisions of this~~ subdivision.

~~(i)~~

(j) In the event of noncompliance with subdivision ~~(g)~~ (h), the landlord's successors in interest shall be jointly and severally liable with the landlord for repayment of the security, or that portion thereof to which the tenant is entitled, when and as provided in subdivisions (e) and ~~(f)~~ (g). A successor in interest of a landlord may not require the tenant to post any security to replace that amount not transferred to the tenant or successors in interest as provided in subdivision ~~(g)~~ (h), unless and until the successor in interest first makes restitution of the initial security as provided in paragraph (2) of subdivision ~~(g)~~ (h) or provides the tenant with an accounting as provided in subdivision ~~(f)~~ (g).

~~Nothing in this~~

~~This~~ subdivision ~~shall~~ does not preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

Notwithstanding ~~the provisions of~~ this subdivision, if, upon inquiry and reasonable investigation, a landlord's successor in interest has a good faith belief that the lawfully remaining security deposit is transferred to him or her or returned to the tenant pursuant to subdivision ~~(g)~~ (h), he or she ~~shall~~ is not be liable for damages as provided in subdivision ~~(k)~~ (l), or any security not transferred pursuant to subdivision ~~(g)~~ (h).

~~(j)~~

(k) Upon receipt of any portion of the security under paragraph (1) of subdivision ~~(g)~~ (h), the landlord's successors in interest shall have all of the rights and obligations of a landlord holding the security with respect to the security.

~~(k)~~

(l) The bad faith claim or retention by a landlord or the landlord's successors in interest of the security or any portion thereof in violation of this section, or the bad faith demand of replacement security in violation of subdivision ~~(i)~~ (j), may subject the landlord or the landlord's successors in interest to statutory damages of up to ~~six hundred dollars (\$600)~~ *twice the amount of the security*, in addition to actual damages. The court may award damages for bad faith whenever the facts warrant such an award, regardless of whether the injured party has specifically requested relief. In any action under this section, the landlord or the landlord's successors in interest shall have the burden of proof as to the reasonableness of the amounts claimed or the authority pursuant to this section to demand additional security deposits.

~~(l)~~

(m) No lease or rental agreement ~~shall~~ *may* contain any provision characterizing any security as "nonrefundable."

~~(m)~~

(n) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or statutory or both, are within the jurisdictional amount allowed by Section 116.220 of the Code of Civil Procedure.

~~(n)~~

(o) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease indicating the requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

~~(o)~~

(p) The amendments to this section made during the 1985 portion of the 1985–86 Regular Session of the Legislature that are set forth in subdivision (e) are declaratory of existing law.